

Kirk Cook
WAD 1074
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1/5/1990

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

IN THE MATTER OF AEROWEST)
) Consent Order
) No. DE 88-S274

I.

JURISDICTION

A. This Consent Order is issued pursuant to the authority vested in the State of Washington, Department of Ecology (Ecology) by:

Chapter 70.105 RCW, the Washington State Hazardous Waste Management Act; 42 U.S.C. § 6901 et seq., Resource Conservation and Recovery Act (RCRA) and Chapter 90.48 RCW, the Washington State Water Pollution Control Act;

On the basis of the results of the testing and analysis described in the Statement of Facts, Part IV, and Ecology files and records, Ecology has determined that the disposal or management practices at the Aerowest facility in Clark County, Washington have given rise to a release of hazardous wastes and/or hazardous substances, that the release has caused damage through groundwater contamination and soil contamination and that the release will continue to cause contamination and damage to ground water, surface water and soil unless the release is abated. Ecology has also determined that (1) Mr. Charles Gilman, Mr. Jerry Melton, Mr. Richard Aukema, Mr. Dale Ebach, Mr. Ken Smith, Mr. Bob

Waite, and Columbia River Service Corp. (hereafter referred to as the "Parties") are persons responsible for the site within the meaning of Chapter 70.105 RCW, 42 U.S.C. § 6901 et seq., and ch. 90.48 RCW, and (2) that the site is a facility within the meaning of Chapter 70.105 RCW, 42 U.S.C. § 6901 et seq., (3) the actions to be taken pursuant to this Consent Order are reasonable and necessary to protect the public health or welfare or the environment; (4) a reasonable time for beginning and completing the actions required by this Consent Order has been provided for; and (5) the Parties have agreed to undertake the actions specified in the Consent Order.

II.

PARTIES BOUND

This Consent Order shall apply to and be binding upon the Parties and Ecology, their agents, successors, and assignees. The Parties agree both to undertake all actions required of them by the terms and conditions of this Consent Order. The parties shall provide a copy of this Consent Order to all consultants and general contractors hired to perform tasks related to this Consent Order and shall exert their best efforts to ensure that all such consultants and the general contractors comply with all the terms of this Consent Order. The parties agree not to contest state jurisdiction on the facts regarding this Consent Order.

III.

STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objective of Ecology and the Parties is to provide a framework for site investigation and closure/post closure of property owned and/or operated by the Parties near Vancouver, Washington, and to prevent or mitigate the release of hazardous substances, if any, from that property and/or contamination of the waters of the state, if any. To accomplish this objective and to resolve the matter constructively and without litigation, the parties consent to the actions required by this Consent Order.

IV.

STATEMENT OF FACTS

A. The project area in this matter (the "Site") is known as Aerowest (at the Clark County Aerodrome), and is situated in Clark County near Vancouver, Washington. The approximate location and boundaries of the Site are depicted by the diagram that is Attachment 1 to this Consent Order;

B. The Parties have owned or own the facility and/or have operated or operate a business at the Site at which chemical paint stripping of airplanes occurred and at which solvent wastes which are listed as dangerous wastes and potentially other dangerous wastes were disposed of by pumping or washing into drywells. The street address of the Site is 9117 N.E. 117th Avenue, Vancouver, Washington.

C. The Aerowest facility was an airplane painting operation. As part of the preparatory work in repainting, aircraft were stripped of old paint. This was accomplished by using solvents including but not limited to Methylene Chloride, Tetrachloroethane, and Chlorinated Phenolic Compounds. The residual solvents, chlorinated phenolic compounds, paint flakes, and paint sludges from the operation were rinsed into drywells inside the building with water and ultimately pumped from these drywells into a drywell constructed specifically for disposal of the solvents which was located outside the building. Waste was also disposed of in a stormwater catch basin and associated drywell.

D. To date, Columbia River Service Corp. has undertaken certain removal and remedial activities with the knowledge of Ecology including excavation and removal of sump drains, soil excavation and removal and soils and ground water sampling and testing.

V.

WORK TO BE PERFORMED

1. The work under this Consent Order shall be performed in accordance with the Site Assessment Work Plan for the Vancouver Aerodrome, (J-2506-01) dated November 29, 1989, as modified by Hart Crowser Inc. letter of December 4, 1989, which has been previously approved by letter by Ecology. A true and correct copy of this work plan, as amended, is attached hereto and incorporated herein by reference as Exhibit A.

2. Upon completion of the work outlined in the work plan, a final report must be submitted to Ecology summarizing the results of the investigation. This report must also include recommendations for possible remediation and/or long-term monitoring.

3. Within twenty (20) days from the effective date of this Order submit to Ecology plans for site security. Upon written approval of the plan, implement the plan immediately.

VI.

DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, Ecology and the Parties shall each designate a project coordinator and the coordinator's address. Each project coordinator shall be responsible for overseeing the implementation of this Consent Order. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between the Parties and Ecology and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the project coordinators.

Either party may change its respective project coordinator and/or project coordinator's address by notifying the other party, in writing, at least ten (10) calendar days prior to the change.

Ecology's project coordinator is:

Kirk V. Cook
7272 Cleanwater Lane
Mail Stop: LV-11
Olympia, WA 98504-6811

The parties project coordinator is:

James W. Cook
c/o Robert M.B. Draper
Assistant Vice President
Pacific First Federal Savings Bank
P.O. Box 91029
Seattle, Washington 98111-9124

VII.

ACCESS

Ecology or any state-authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the Site; reviewing the progress in carrying out the terms of this Consent Order; conducting such tests as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to Ecology by the Parties. The Parties shall permit such persons to inspect and copy all non-privileged records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this part shall comply with all approved health and safety plans applicable to the Site.

VIII.

PERFORMANCE

All response work performed pursuant to this Consent Order shall be under the direction and supervision of Hart Crowser Inc. The Parties shall notify the Ecology project coordinator as to

such engineer(s) or geologist(s), and of any contractors and sub-contractors to be used in carrying out the terms of this Consent Order, in advance of their involvement at the Site.

IX.

DATA REPORTING/AVAILABILITY SAMPLING

The Parties shall make the results of all sampling and/or tests or other data, including all quality assurance/quality control information, generated by the Parties, or on the Parties' behalf, with respect to the implementation of this Consent Order available to Ecology and shall submit these results in progress reports as described in Part X of this Consent Order. Ecology shall make available to the Parties the results of any sampling and/or tests or other data similarly generated by Ecology.

At the request of Ecology, the Parties shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by the Parties pursuant to the implementation of this Consent Order.

X.

PROGRESS REPORTS

The Parties shall submit to Ecology written monthly progress reports which describe the actions they have taken during the previous month to implement the requirements of this Consent Order. Progress reports shall also describe the activities scheduled to be taken during the next month. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in the Order are

being met. All progress reports shall be submitted by the tenth day of the month after the effective date of this Consent Order. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Consent Order shall be sent by certified mail, return receipt requested, and addressed to Ecology's project coordinator.

XI.

RETENTION OF RECORDS

The Parties shall preserve, during the pendency of this Consent Order and for five (5) years from the date of completion of this Consent Order, or the closure/post closure care period, whichever is greater, all records and documents in its possession, or in the possession of its employees, agents, or contractors relevant to the implementation of this Consent Order despite any document retention policy to the contrary. Upon request of Ecology, the Parties shall make all non-archived records available to Ecology within five (5) working days and allow access for review at all reasonable times. All archived records shall be made available to Ecology within a reasonable period of time.

The Parties recognize that RCRA and Ch. 70.105 RCW require that certain documents be kept on site and be available for Ecology inspection at all times. Notwithstanding this requirement the Parties agree, in the interests of convenience, to arrange for appropriate off site storage and availability of such documents, acceptable to all Parties and Ecology.

XII.

INDEMNIFICATION

The Parties agree to indemnify and save and hold Ecology, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Parties, its officers, employees, agents, or contractors in entering into and implementing this Consent Order; provided, however, that the Parties shall not indemnify Ecology nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent or intentional acts or omissions of Ecology, or the employees and agents of Ecology in implementing the activities pursuant to this Consent Order. Nothing herein shall preclude the Parties from bringing an action against Ecology for its acts of negligence or intentional misconduct as provided by law.

XIII.

RESOLUTION OF DISPUTES

If the Parties object to any Ecology notice of disapproval, proposed modification, or decision made pursuant to this Consent Order, it shall notify Ecology in writing of its objections within fourteen (14) days from receipt of such notice. Thereafter, the parties shall confer in an effort to resolve the dispute. If agreement cannot be reached on the dispute within thirty (30) days after receipt by Ecology of such objections, Ecology shall promptly provide a written statement of its decision to the Parties.

The decision of Ecology pursuant to this dispute resolution procedure shall not be appealable to the Pollution Control Hearings Board. However, either party may commence action in Superior Court of the State of Washington to enforce the terms of this Consent Order or to seek other appropriate relief as provided for by law. The Parties stipulate that venue for any such action shall lie in Thurston County Superior Court, Olympia, Washington.

Nothing herein shall limit Ecology's authority to issue penalties for noncompliance with this Consent Order, or as otherwise allowed by law.

XIV.

ENDANGERMENT

In the event Ecology determines or concurs in a determination by another local, state, or federal agency that activities implementing or in noncompliance with this Consent Order, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order the Parties to stop further implementation of this Consent Order for such period of time as needed to abate the danger or may petition a court of competent jurisdiction for such an order. During any stoppage of work under this part, the Parties' obligations with respect to the work ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which stopped, shall be extended, pursuant to Part XVI of this

Consent Order, for such period of time as Ecology determines is reasonable under the circumstances.

In the event the Parties determine that activities undertaken in furtherance of this Consent Order or any other circumstances or activities are creating an imminent and substantial endangerment to the people on the Site or in the surrounding area or to the environment, the Parties may stop implementation of this Consent Order for such periods of time necessary for Ecology to evaluate the situation and determine whether the Parties should proceed with implementation of the Consent Order or whether the work stoppage should be continued until the danger is abated. The Parties shall notify either Ecology field personnel on-site or the project coordinator as soon as is possible but no later than twenty-four (24) hours after such stoppage and provide Ecology with documentation of its analysis in reaching this determination as soon as possible thereafter if required by Ecology. If Ecology disagrees with the Parties' determination, it may direct the Parties to resume implementation of this Consent Order. If Ecology concurs in the work stoppage, the Parties' obligations shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Part XVI of this Consent Order, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to this clause shall be resolved through the dispute resolution procedures.

Unless otherwise specified, all other notification of Ecology pursuant to this Consent Order shall be made to Ecology's project coordinator.

XV.

EXTENSION OF SCHEDULE

A. An extension shall be granted only when a written request for an extension is submitted prior to the deadline for which the extension is requested and good cause exists for granting the extension. The request shall specify the reason(s) the extension is needed. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. A requested extension shall not be effective until approved by Ecology in writing.

B. The burden shall be on the Parties to demonstrate to the satisfaction of Ecology that the request for the extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but not be limited to, the following:

1. Circumstances beyond the reasonable control and despite the due diligence of the Parties, including, but not limited to delays caused by Ecology or unforeseen ground obstacles;

2. Delays which are directly attributable to any changes in permit terms or conditions or refusal to grant a permit needed to implement the requirements of this Consent Order if the Parties filed a timely application for the necessary permit; and

3. Act of God, fire, flood, blizzard, extreme temperatures, or other unavoidable casualty.

Except as provided above, neither increased costs of performance of the terms of this Consent Order nor changed economic circumstances may be considered circumstances beyond the reasonable control of the Parties.

C. Ecology may extend the time schedules contained in this Consent Order for a period not to exceed ninety (90) days only, except if an extension is needed as a result of: (1) delays in the issuance of a necessary permit which was timely applied for, or (2) judicial review of the issuance, non-issuance, or reissuance of a necessary permit, or (3) other circumstances deemed exceptional or extraordinary by Ecology.

XVI.

AMENDMENT OF ORDER

The terms and conditions of this Consent Order may only be amended by a written agreement between the Parties and Ecology. Such amendment shall become effective upon signature of all parties.

The Parties shall submit any request for significant modifications to the work scope or schedule of Exhibit A to Ecology for approval. Ecology shall indicate its approval or disapproval of such request in writing within ten (10) days after the request for modification is received. Any such disapproval shall state reasons for the disapproval.

Ecology shall notify the Parties in writing of any Ecology proposal for significant modifications to the work scope or schedule of Exhibit A and the basis for such proposal. The Parties shall thereafter comply with such modifications, unless it does not agree with those modifications, in which case the disagreement shall be addressed through the dispute resolution procedures described in Part XIII of this Consent Order.

The above provisions concerning significant modifications to the work scope of Exhibit A shall not apply to minor field changes to the work scope or schedule which shall be the subject of oral agreement between the project representatives and which may be set forth in writing after the fact.

No guidance, suggestions, or comments by Ecology will be construed as relieving the Parties of their obligation to obtain formal approval as may be required by this Consent Order. No verbal communication by Ecology shall relieve the Parties of the obligations specified herein.

XVII.

OTHER ACTIONS

Ecology reserves the right to conduct or provide for conducting remedial action at the Site, to issue orders and/or penalties, and to take any other enforcement action allowed by law.

XVIII.

COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by the Parties pursuant to this Consent Order shall be done in accordance with all applicable federal, state, and local requirements.

All facilities used by the Parties for the off-site treatment, storage, or disposal of hazardous substances removed from its property at the Site must be in compliance with the applicable requirements of the Resource Conservation and Recovery Act, as amended November 1984 and State Dangerous Waste Regulations. As indicated in the project schedule in Part V, the Parties must designate in a report to Ecology any facilities that the Parties propose to use for such off-site storage, treatment, or disposal; and Ecology must give prior approval for the use of such facilities. Disputes concerning the use of off-site storage, treatment or disposal facilities shall be addressed through the disputes resolution procedures specified in Part XIII of this Consent Order.

XIX.

DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

The Parties shall not use any portion of the Site in any manner that would adversely affect the integrity of any containment system, treatment system, or monitoring system installed pursuant to this Consent Order.

No conveyance of title, easement, or other interest in any portion of the Site owned by the Parties shall be consummated

without provision for continued operation and maintenance of any containment system, treatment system, or monitoring system installed or operating pursuant to this Consent Order. Until the remedial program described in this Consent Order is completed, the Parties shall notify Ecology's project coordinator by registered mail, at least fourteen (14) days prior to any conveyance of any interest in property that in whole or part is located within the Site.

Within thirty days after issuance of this Consent Order by Ecology, the Parties shall cause to be recorded in the appropriate registry of deeds a notice and a copy of this Consent Order with the deeds for its property at the Site, and shall verify to Ecology that such recording has been completed.

XX.

RESERVATION OF RIGHTS

The Parties do not admit any legal or equitable liability under any statute, regulation, ordinance or common law for damages caused by the generation, handling, storage, treatment, transportation, or disposal of hazardous substances or wastes at the Site;

By entering into this Consent Order, the Parties do not intend to release or discharge nonconsenting persons or any other person from any liability they may have with respect to matters alleged in the Order.

XXI.

EFFECTIVE DATE

This Consent Order is effective upon the date that the Director of the Department of Ecology, or her authorized representative, signs this Consent Order.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

Howard R. Steeley
By: Howard R. Steeley

January 5, 1990
Date

Its: Southwest Region Supervisor
Solid and Hazardous Waste Program

COLUMBIA RIVER SERVICE CORP.

[Signature]
By: Vice President
Its: Vice President

12-14-89
Date

By: _____

Date _____

By: _____

Date _____

By: _____

Date _____

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